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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

CRUISE LINES INTERNATIONAL
ASSOCIATION ALASKA, *et al.*,

Plaintiffs,

v.

THE CITY AND THE BOROUGH OF
JUNEAU, ALASKA, *et al.*,

Defendants.

Case No. 1:16-cv-00008-HRH

**PLAINTIFFS' REPLY TO CITY AND
BOROUGH OF JUNEAU AND RORIE
WATT'S OBJECTIONS AND
RESPONSES TO PLAINTIFFS'
STATEMENT OF FACTS IN
SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT (ECF NO. 118-3)**

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**PLAINTIFFS' REPLY TO CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S
OBJECTIONS AND RESPONSES TO PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (ECF NO. 118-3)**
Cruise Lines International Association Alaska, et al. v. City and Borough of Juneau, et al.

Plaintiffs Cruise Lines International Association and Cruise Lines International Association Alaska (“Plaintiffs” or “CLIA”) respectfully submit this statement in response and opposition to Defendants City and Borough of Juneau and Rorie Watt’s Objections and Responses to Plaintiffs’ Statement of Facts in Support of Plaintiffs’ Motion for Summary Judgment, ECF No. 118-3, (“CBJ Objection” or “CBJ Obj.”).¹

CBJ’s Objection fails to conform to the mandates of Federal Rule of Civil Procedure 56. For the reasons set forth below, the Court should disregard all argument, factual conclusions, objections based on grounds other than ultimate admissibility of evidence at trial, and other matters in CBJ’s Objection that are not assertions of genuine disputes of fact supported by particular evidence in the record or assertions that the materials cited do not establish the presence of a genuine dispute. *See, e.g., Gaub v. Prof'l Hosp. Supply, Inc.*, 845 F. Supp. 2d 1118, 1128 (D. Idaho 2012); *Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1119 (E.D. Cal.

¹ Parties have an obligation to “submit evidence responsibly.” *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 775 (9th Cir. 2002) (“The efficient management of judicial business mandates that parties submit evidence responsibly.”). At the summary judgment stage, a party’s submission must cite to the specific pieces of evidence that support each assertion of fact, *Orr*, 285 F. 3d at 775, be organized in a “reasonably intelligent manner,” and rely only on evidence that is authenticated by “persons with personal knowledge through whom [the documents] could be introduced at trial[.]” *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982).

CBJ’s factual filings do not meet the standards set forth in *Orr* and *Zoslaw*. CBJ has submitted three separate factual filings in support of its Cross-Motion for Summary Judgment and in opposition to CLIA’s Motion for Summary Judgment. *See* CBJ Smt. Facts Not in Dispute & Genuine Issues of Mat. Fact in Dispute, ECF No. 118-1; CBJ Smt. Facts Supp. Mot. Summ. J., ECF No. 118-2; CBJ Obj. Separately and in combination, these filings are cumbersome, inefficient, poorly organized, redundant, and argumentative. CBJ does not present its factual assertions in numbered paragraphs accompanied by specific, supporting citations to the proffered evidence. Instead, CBJ proffers its assertions in narrative format and provides only general, summary citations to entire exhibits or affidavits. (The one exception is CBJ’s Statement of Material Facts in Dispute and Not in Dispute, which sets forth legal conclusions in paragraph format, but fails to cite to any supporting evidence.) The defects in these submissions place enormous burdens on opposing counsel and the Court to paw through a voluminous record in an effort to match assertions and objections to particular exhibits and documents.

2006); *United Heritage Life Ins. Co. v. First Matrix Inv. Servs. Corp.*, CV 06-0496-S-MHW, 2009 WL 3229374, at *12 (D. Idaho Sept. 30, 2009).

DISCUSSION

1. Federal Rule of Civil Procedure 56 Sets Forth The Only Method Available For Asserting Factual Disputes In Opposition To A Motion For Summary Judgment.

Federal Rule of Civil Procedure 56(c) provides:

(1) Supporting Factual Positions. A party asserting that a fact . . . is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence . . . of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). A fact is material if it “might affect the outcome of the suit under the governing law” and is considered “genuinely disputed” if there is “sufficient evidence for a reasonable trier of fact to decide in favor of the nonmoving party.” *Finjan, Inc. v. Blue Coat Sys., LLC*, Case No. 15-cv-03295-BLF, 2017 WL 7050646, at *5 (N.D. Cal. July 28, 2017) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The non-moving party’s “merely colorable, or [] not significantly probative” evidence and “[m]ere conclusory, speculative testimony in affidavits and moving papers” will not suffice to “raise genuine issues of fact and defeat summary judgment.” *Id.* (citations omitted); see *Liberty Lobby*, 477 U.S. at 249-50; *Thornhill Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979); *Burch*, 433 F. Supp. 2d at 1113 (“[T]he nonmoving party has an affirmative duty to direct the court's attention to those

specific portions of the record upon which it seeks to rely to create a genuine issue of material fact.” (citation omitted)).

Further, Rule 56 only permits objections to the admissibility of evidence proffered in support of a summary judgment motion, *i.e.*, that the proffered evidence “cannot be presented in a form that would be admissible at trial.” Fed. R. Civ. P. 56(c)(2). Other objections, such as objections that an asserted fact is “irrelevant, speculative, and/or argumentative, or that it constitutes an improper legal conclusion are all duplicative of the summary judgment standard itself” and should be argued, rather than simply objected to. *Burch*, 433 F. Supp. 2d at 1119.

2. CBJ Alleges A “Genuine Issue” Of Fact With Respect To Only Nineteen Of CLIA’s 223 Fact Statements.

CBJ’s Objections consists of 84 pages of narrative responses and objections to and arguments regarding the relevance, weight, and significance (both factual and legal) directed at 81 of CLIA’s 223 statements of fact. *See generally* CBJ Obj. Despite the length of its narrative response, CBJ purports to raise a “genuine issue of fact” with regard to only nineteen of the 81 facts addressed in CBJ’s filing: CLIA Fact Nos. 4, 28, 32, 34, 36, 47, 58, 71, 75, 76, 78, 79, 84, 94, 103, 111, 112, 113 and 133. *Id.* These facts concern:

No. 4: *Whether* CLIA’s cruise line members operate vessels registered in the United States. CLIA Smt. Facts Supp. Mot. Summ. J. ¶ 3, ECF No. 68 (“CLIA Supp. Facts”). CBJ argues that CLIA’s cited exhibit does not support this assertion. CBJ Obj. at 3. CLIA agrees and has consented to the withdrawal of this exhibit. *See* CLIA’s Response to CBJ’s Motion to Strike. CBJ also summarily asserts that whether CLIA’s cruise line members have cruise ships “registered” in the United States is a material disputed fact related to standing. CBJ Obj. at 3. CBJ, however, does not argue anywhere in any of its summary judgment filings that CLIA lacks

standing to bring the constitutional and federal statutory claims in CLIA's First Amended Complaint because CLIA cruise members allegedly do not have cruise ships "registered" in the United States. Legal assertions are, by definition, not statements of fact. As such, CBJ has waived any arguments related to CLIA's standing. .

No. 28: *Whether* the PDF's stated purpose is to "provid[e] funding for capital improvements to the downtown waterfront." CLIA Supp. Facts ¶ 28. CBJ argues that CLIA misquotes the relevant resolution. CBJ is wrong. The CBJ resolution cited in support of No. 28 states in its opening paragraph: "WHEREAS, the Assembly, by Resolution 2150, established a Port Development Fee for the purpose of providing funding for capital improvements to the downtown waterfront..." CLIA Mot. Summ. J. at Ex. 16 at 1, ECF No. 69-1.

No. 32: *Whether* the Marine Passenger Fee Fund holds MPF revenues "to mitigate the cost of tourism and tourism development." CLIA Supp. Facts ¶ 32. CLIA supports Fact No. 32 with the CBJ's Comprehensive Annual Financial Report for FY 2016, which states that the Marine Passenger Fee, a non-major special revenue fund, "[a]ccounts for revenues approved by the voters to mitigate the cost of tourism and tourism development." CLIA Mot. Summ. J. at Ex. 97, at 11, ECF No. 74-7. CBJ argues that this is not consistent with the purposes stated in the Ordinance, but CBJ does not contest the authenticity of the CBJ Report. *Id.*

No. 34: *Whether* monies in the Marine Passenger Fee Fund and the Port Development Fee Fund are transferred to other general, special revenue, or enterprise funds. CLIA Supp. Facts ¶ 34. CBJ disputes Fact No. 34 by generally citing to the affidavit of Mr. Bartholomew. CBJ Obj. at 13. Rule 56 requires that a party asserting a genuine dispute support the assertion by "citing to particular parts of materials in the record." Fed. R. Civ. P. 56(c). CBJ's general citation to the entirety of an affidavit does not meet this standard. Furthermore, Mr. Bartholomew's

affidavit teems with legal and factual conclusions devoid of foundation. As such, the affidavit provides “[m]ere conclusory, speculative testimony” that does not suffice to raise a genuine issue of fact. *Finjan*, 2017 WL 7050646, at *5.

No. 36: *Whether* CLIA’s assertion that “[the CBJ’s allocation] formula is used to allocate MPF revenues to Juneau municipal government department whose operations CBJ deems to be affected by cruise activities” is supported by the cited exhibit. CLIA Supp. Facts ¶ 36. CLIA contends that this assertion is adequately supported by the exhibit and further notes that, in response to this assertion, CBJ admits “The allocation for certain government expenses is related to those departments who provide services to the cruise ships and passengers.” CBJ Obj. at 13.

No. 47: *Whether* CBJ assesses any fees similar to the Entry Fees on passengers arriving by air to Juneau for the purpose of supporting local government services. CLIA Supp. Facts ¶ 47. CBJ disputes this assertion and, in support, cites to Mr. Bartholomew’s affidavit generally. CBJ Obj. at 14. This type of unspecific citation is insufficient under Rule 56(c) for the reasons stated above and CLIA has moved to strike this Affidavit. Further, CBJ’s objection as to relevance is not a proper objection under Rule 56. *See Burch*, 433 F. Supp. 2d at 1119; *Gaub*, 845 F. Supp. 2d at 1128.

No. 58: *Whether* the enactment of the Alaska State statutory provision providing for the offset of local passenger levies was intended to ensure that CPV Tax revenues are used to benefit vessels. CLIA Supp. Facts ¶ 58. CBJ argues that this statement is not supported by the cited exhibit. CBJ Obj. at 17. CLIA agrees that the exhibit does not fully support this assertion and therefore withdrawals Fact No. 58.

No. 71: *Whether* the cruise season runs from “*approximately* May 1 through September 15.” CLIA Supp. Facts ¶ 71 (emphasis added). CBJ objects to this assertion the grounds that last

year the season ran through September 30 and this year it is scheduled to run from April 30 through October 2. *See* CBJ Obj. at 18. CLIA's approximate dates are not inconsistent with CBJ's asserted dates and thus CBJ's objection does not present a factual dispute.

No. 75: *Whether* voyages to Juneau originate both in the U.S. and in foreign ports. CLIA Supp. Facts ¶ 75. CLIA's members' round-trip voyages through Alaska usually use Seattle or Vancouver, British Columbia, as the embarkation/disembarkation port. *See* CBJ Mot. Summ. J. at Ex. C, at 10, ECF No. 118-7; *see also id.* at Ex. DD, at 1, ECF No. 122-4. There can be no genuine dispute as to this fact because it is supported by CBJ's own submissions.

No. 76: *Whether* cruise vessels generally stay in Juneau for "several" hours. CLIA Supp. Facts at ¶ 76. CBJ argues that vessels stay in Juneau "6-14." CBJ Obj. at 18-19. This is a semantic argument, not a factual argument. Additionally, CBJ's only support for this assertion is an affidavit that CLIA has moved to strike. *Id.*; *see also* CLIA Mot. Strike Bartholomew Aff. (contemporaneously filed).

No. 78: *Whether* the cruise season lasts from May through September. CLIA Supp. Facts ¶ 78. *See supra* No. 71.

No. 79: *Whether* the cruise ship industry provides numerous sources of revenue for CBJ. CLIA Supp. Facts ¶ 79. CBJ disputes this assertion and, in support, cites to Mr. Bartholomew's affidavit generally. CBJ Obj. at 14. This type of unspecific citation is insufficient under Rule 56(c) for the reasons stated above and CLIA has moved to strike this affidavit. CLIA's Motion to Strike Bartholomew Affidavit. Moreover, CBJ's argument overlooks the obvious fact that, but for the cruise ship industry, CBJ would not generate revenue from the cruise ship passengers.

No. 84: *Whether* CBJ sales tax revenue is generated by cruise line purchases in Juneau of goods and services. CLIA Supp. Facts at ¶ 84. CBJ raises its responsive assertion in its Motion to

Strike certain of CLIA's exhibits. *See* CBJ Mot. Strike at 7-8. CLIA is filing a separate response to CBJ's Motion to Strike. CBJ supports its assertion of a dispute with respect to Fact No. 84 in part with a general citation to Mr. Bartholomew's affidavit, which is insufficient under Rule 56(c) for the reasons stated above. CLIA has also moved to strike the affidavit. *See* CLIA Motion to Strike Bartholomew Affidavit.

No. 94: *Whether* "some" cruise vessel passengers visiting CBJ, either through their own arrangements or as part of group excursions arranged by the cruise lines, travel from downtown CBJ to Statter Harbor to participate in whale watching. CLIA Supp. Facts ¶ 94. CBJ argues that "some" is inaccurate and that 86% of people participating in whale watching at Statter Harbor are cruise ship passengers. CBJ Obj. at 27. CBJ says nothing about the percent of cruise ship passengers that participate in whale watching as opposed to other activities and CBJ presents no evidence as why CLIA statement regarding "some cruise ship passengers" is inaccurate.

No. 103: *Whether* CLIA has objected to the City Manager's recommendations for use of the MPF revenues. CLIA Supp. Facts ¶ 103. CBJ argues that CLIA's supporting exhibit is "self-serving," which is not a valid objection. CBJ Obj. at 43. However, as further support, CLIA directs the Court to Exhibit A of CLIA's Response to CBJ's Statement of Facts which outlines additional documents and statements from both parties in support of this assertion.

No. 111: *Whether* CBJ's allocations of MPF revenues to the General Government Fund reached a high of \$2,209,000 at some point between FY 2006 and FY 2016. CLIA Supp. Facts ¶ 111. CBJ argues that the exhibits do not support this assertion. CBJ Obj. at 44. CBJ is wrong. Exhibit 130 states that the FY12 actual expenditures of MPF revenues with respect to the General Fund was "\$2,209,000." ECF 76-10 at 6.

No. 112: *Whether* CBJ allocates a portion of MPF revenues annually to support general government operations. CLIA Supp. Facts ¶ 112. CBJ admits this allocation process in its statement of facts. *See* CBJ Supp. Facts at 28-29.

No. 113: *Whether* CLIA’s assertion that the “[g]eneral government operations include the following department or divisions within CBJ: Mayor and Assembly, Law, Administration, Libraries, Finance, Community Development, Capital City Fire Rescue, General Engineering, Building Maintenance, Parks and Recreation, Police, Streets, and Capital Transit” is supported by the cited exhibit. CLIA Supp. Facts ¶ 113; CBJ Obj. at 46. CLIA admits that certain of these operations are not included in the cited exhibit and therefore restates Fact No. 113 as follows: “General government operations include the following department or divisions within CBJ: Mayor and Assembly, Law, Libraries, Finance, Community Development, General Engineering, Parks and Recreation, Police, Streets, and Capital Transit. (Ex. 78 at 6)”

No. 133: *Whether* CBJ’s Capital Transit provides a safe, clean, and cost effective way for visitors to view the glacier and other areas of Juneau, and whether the fare revenue from summer tourists also offsets the cost of the transit bus service. CLIA Supp. Facts ¶ 133. CBJ asserts that CLIA’s proffered Exhibit 055 does not support CLIA Fact No. 133 and repeats this argument in its Motion to Strike certain of CLIA’s exhibits. *See* CBJ Mot. Strike at 6-7. CLIA is withdrawing Exhibit 055, a Downtown Circulator Shuttle Feasibility Study performed by an independent company, Moore & Associates. Instead, CLIA offers CBJ Exhibit CG, at 2, ECF No. 121-7; CBJ Exhibit EC, at 3, ECF No. 123-3; and, CBJ Exhibit EE, at 3, ECF No. 123-5 to support the facts alleged in CLIA Fact No. 133.

None of these purportedly contested facts, even if resolved in favor of CBJ, affect the outcome of CLIA’s lawsuit under governing law. In other words, although the Court may find

that CBJ has raised a “genuine dispute” as to these nineteen facts, the facts are not *material* to the Court’s decision on CLIA’s claims and do not preclude the entry of summary judgment in CLIA’s favor.

Additionally, CBJ argues that Fact No. 29, concerning whether the stated purposes of the PDF, apart from dock improvements, are unrelated to providing any service to vessels, is a legal conclusion. CBJ Obj. at 11-12. CBJ “disputes” Fact No. 29 by generally citing to the affidavits of Mr. Watt and Mr. Bartholomew. *Id.* Rule 56 requires that a party asserting a genuine dispute support the assertion by “citing to particular parts of materials in the record.” Fed. R. Civ. P. 56(c). CBJ’s general citations to the entirety of two affidavits does not meet this standard. Furthermore, Mr. Watt’s and Mr. Bartholomew’s affidavits are rife with legal conclusions and factual conclusions devoid of foundation. As such, the affidavits provide “[m]ere conclusory, speculative testimony” that does not suffice to raise a genuine issue of fact. *Finjan*, 2017 WL 7050646, at *5.

2. CBJ’s Remaining Responses And Objections To CLIA’s Facts Fail To Demonstrate A “Genuine Dispute” As Required By Rule 56.

CBJ does not raise a “genuine dispute” as to any other fact referenced in CBJ’s filing. Instead, CBJ accepts the fact asserted by CLIA, but then proceeds to object to the fact on the basis of relevance, context, or significance through argument or the assertion of allegedly countervailing facts. In every instance, CBJ’s commentary on CLIA’s asserted fact does not render CLIA’s asserted fact subject to “dispute[,]” *i.e.*, CBJ does not provide sufficient evidence to demonstrate that the fact may reasonably be resolved in favor of either party. *See Liberty Lobby, Inc.*, 477 U.S. at 250 (“The inquiry performed is the threshold inquiry of determining whether there is the need for a trial—whether, in other words, there are any genuine factual

issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.”).

Take, for example, CBJ’s response to Fact No. 11, which asserts:

11. On October 5, 1999, CBJ voters approved the MPF initiative, Proposition 1, which charged cruise lines a \$5.00 fee per cruise vessel passenger in addition to port dues. (ECF No. 28, ¶ 16; ECF No. 40, ¶ 16; Ex. 098 pp. 1-2) A memorandum authored by CBJ attorney John R. Corso addressed constitutional issues raised by the MPF under the Commerce Clause and the Tonnage Clause of the U.S. Constitution. (Ex. 120 pp. 1-39)

CLIA Supp. Facts ¶ 11. Responding to Fact No. 11, CBJ does not cite to evidence demonstrating that Fact No. 11 could be resolved in favor of either CLIA or CBJ—and therefore must be determined by a finder of fact. CBJ does not dispute that CBJ voters approved the MPF initiative or that Mr. Corso wrote a memo addressing the constitutional issues raised by the MPF. CBJ Obj. at 6-7. Instead, CBJ argues that “CLIA presents no factual or legal authority that would have allowed the CBJ assembly to ignore the vote of the people on the Initiative and not institute the passenger fee by adopting an Ordinance.” *Id.* at 6. CLIA fails to see how CBJ’s statement injects doubt as to the historical fact that CBJ voters approved in MPF initiative in October 1999. In response to the second statement of Fact No. 11, CBJ attempts to explain away the import of Mr. Corso’s analysis of constitutional issues related to the MPF and essentially disavows itself of Mr. Corso’s opinions as “not admissions by CBJ” even though the cited documents contain statements made by Mr. Corso in his role as CBJ’s “in house” attorney to the CBJ Mayor and Assembly. CBJ Obj. at 6-7; *see also id.* at 9 (CBJ attempts to disavow the statements of another former CBJ attorney, Mr. Hartle). CBJ’s response cannot be characterized as demonstrating that Fact No. 11 is in dispute. Rather, it is mere argument and a discussion of additional facts to

which CLIA will respond in accordance with Rule 56(c) to the extent that CBJ has included such facts in its Statement of Facts.

The remainder of CBJ's assertions of dispute suffer from similar deficiencies and fail to demonstrate genuine disputes, much less genuine disputes of material fact. CBJ objects to numerous fact statements on relevance grounds.² *See, e.g.*, CBJ Obj. at 14 (Fact Nos. 45, 47), 15 (Fact No. 48), 15-16 (Fact Nos. 49-52), 16-17 (Fact Nos. 54-65), 20 (Fact No. 80), 21 (Fact Nos. 85-90). Relevance is not the basis for an objection to facts asserted in support of a motion for summary judgment. *Gaub*, 845 F. Supp. 2d at 1128 (“Objections to evidence on the ground that the evidence is irrelevant . . . are superfluous, and the court will overrule them.”). CBJ also objects to fact statements as “misleading.” *See, e.g.*, CBJ Obj. at 8 (Fact No. 19), 11 (Fact No. 27), 27 (Fact No. 94). These are not proper objections in the context of evidence submitted in support of a motion for summary judgment. *See Burch*, 433 F. Supp. 2d at 1119.

Further, CBJ proffers dozens of pages of legal and factual argument regarding the alleged significance of CLIA's facts, without actually disputing CLIA's facts. *See* CBJ Obj. at 29-43.³ For example, CLIA stated:

161. In each of FY 2012 through 2014, CBJ budgeted \$25,000 in MPF revenues to Capital City Fire/Rescue air medevac support. In FY 2015, CBJ budgeted \$15,000 in MPF revenues to Capital City Fire/Rescue air medevac support. (Ex. 001 p. 47)

CLIA Supp. Facts ¶ 161. CBJ responded:

² CBJ repeats many of its relevance arguments in its Motion to Strike. CLIA is opposing the Motion to Strike and responds to CBJ's arguments on relevance in the context of CLIA's opposition to that motion.

³ CLIA's Fact Nos. 101-104 collectively take up less than one-half of a page. CLIA Supp. Facts ¶¶ 101-104. CBJ responds with fifteen pages of additional facts and legal arguments. CBJ Obj. at 29-43. CBJ needs to raise additional facts in its Statement of Facts and assert legal arguments in its brief.

No. 161. This funding is for unrecoverable costs incurred by the CBJ fire department for the air medivac program, which is used to helicopter injured passengers and crew from the cruise ships. The CCFR medivacs respond to incidents in the upper half of Southeast Alaska, and pick up cruise ship passengers who are left by the cruise ships in the smaller communities that do not have adequate medical facilities or a runway to support large enough aircraft; CCFR pick up these passengers with a helicopter, provides advanced life support on site and transports them to higher level of care.^[1] CCFR also uses the program to rescue cruise ship passengers from Mt. Roberts and Mendenhall Glacier, allowing them to be treated before departing back on the cruise ships.^[1] The Fire/Rescue medivac support is needed due to the high volume of cruise-related transport.^[1] The amount requested by CCFR and granted the Assembly adequately reflects the costs; when there is a reduction in CCFR air medivacs for the cruise industry the amount funded goes down.^[1] CCFR undertakes these service because it is not provided by the cruise ships.^[1]

The medical transport of the cruise ship passengers is a direct benefit to CLIA's vessels and passengers.^[1] According to CLIA, their medical guidelines include the goal "to facilitate the evacuation of seriously ill or injured patients when deemed necessary by a shipboard physician."^[1] The cruise ship doctors make the call as when a passenger needs emergency evacuation; so these are services that are provided as requested by the vessel.^[1]

Additionally, CLIA did not object to any funding for medivac support regardless of provider for FY13, FY14, or FY15.^[1] To the extent that CLIA now claims that having air medivacs available to their passengers is not a benefit to their members or vessels, this is a dispute of material fact which precludes summary judgment.

CBJ Obj. at 71-72. CBJ's response does not raise a "genuine dispute" as to *whether* CBJ budgeted MPF revenues to Capital City Fire/Rescue air medivac support. *See* Fed. R. Civ. P. 56(c).

3. All CLIA Fact Statements Not Properly Addressed By CBJ Are Undisputed For Purposes Of CLIA's Motion For Summary Judgment And Legal Arguments Contained In CBJ's Factual Filing Should Be Disregarded.

CBJ's Objection is improper under Rule 56(c). CBJ has failed to identify disputed facts concisely and has populated its pleadings with so many improper narrative objections and legal arguments so numerous and intertwined that it is impossible for CLIA to respond adequately. Neither CLIA nor this Court should have to sift through CBJ's filings to identify the potentially

relevant factual issues, if any. Rather, Rule 56 puts the burden on CBJ to support its assertions of disputed material facts with clarity and precision. CBJ has not done this. In such a case, the Court may treat all facts not properly addressed as undisputed for purposes of CLIA's Motion for Summary Judgment. Fed. R. Civ. P. 56(e).

DATED: March 23, 2018

Respectfully submitted,

By: /s/ C. Jonathan Benner

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CERTIFICATE OF SERVICE

I certify that on March 23, 2018, I caused a true and correct copy of the foregoing Motion to be filed using the Court's Electronic Case Files System ("ECF"). The document is available for review and downloading via the ECF system, and will be served by operation of the ECF system upon all counsel of record.

/s/ Kathleen E. Kraft